

FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE  
COUNTY OF MECKLENBURG SUPERIOR COURT DIVISION  
09-CVS-7887  
MECKLENBURG CO., C.S.C.

ORIGIN DEVELOPMENT, LLC,  
Plaintiff,  
v.  
MIKE DAY AND BETSY DAY,  
Defendants.

ORDER

A jury trial was empanelled before Superior Court Judge Yvonne Mims Evans on July 19 and 20, 2010 to hear evidence. Plaintiff was represented by John Buric and Alex Heroy with the law firm of James, McElroy & Diehl, P.A. Defendants were represented by Mel Garofalo of the law firm Hedrick, Gardner, Kincheloe & Garofalo, LLP. Plaintiff and Defendants presented evidence over the course of two days. At the conclusion of all the evidence, Plaintiff moved for directed verdict on its claim for specific performance of the Purchase Agreement, breach of contract and money damages. After considering the evidence presented by the Parties, hearing testimony of the witnesses, considering legal arguments presented by counsel, and Legal Authorities submitted by counsel, the Court finds the following:

FINDINGS OF FACT

1. On or about April 2, 2007, Defendants signed and entered into a Purchase Agreement with Origin in which they agreed to purchase Unit 7 of the Celadon Condominium Project ("the Condominium") for a purchase price of \$315,000 (the "Purchase Agreement").
2. The Purchase Agreement was supported by adequate consideration and adequately described the Condominium.

3. The parties agreed that the Defendants would close on the Condominium on January 7, 2009.

4. Defendants did not present any evidence to show that Plaintiff engaged in any fraud or deceit, nor did Defendants present any evidence to show a mistake or unequal bargaining. The Court therefore finds that no such conditions of fraud, deceit, mistake or unequal bargaining existed.

5. Both the Defendants and the Plaintiff were intelligent, willing parties who contracted at arms-length.

6. The Defendants were experienced purchasers of real property.

7. Although the Defendants were not represented by a real estate agent, they worked with a realtor, Mr. John Geuss, whom they knew and trusted. Defendants were fully aware that Mr. Geuss, however, represented the Plaintiff in the transaction.

8. Defendants were in no way prevented or prohibited from seeking independent advice, either from a lawyer or real estate agent.

9. Defendants resided in Georgia, but contemplated returning to Charlotte, North Carolina, where they had lived some years prior.

10. The Defendants could reasonably have contemplated that their plans to return to Charlotte could be frustrated or delayed.

11. Defendants plans were, in fact, frustrated by Mr. Day's job not being transferred to Charlotte, as Defendants had presumed.

12. Defendants repudiated and breached the Purchase Agreement by refusing to close on the Condominium and tender the balance of the purchase price.

13. At all relevant times, Plaintiff acted honestly, forthright, and in good faith.

## CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter of this dispute.

2. “[I]t is well settled that when the contract is in writing, is certain in its terms, is for a valuable consideration, is fair and just in all its provisions, and is capable of being enforced without hardship to either party, it is as much a matter of course for a court of equity to decree its specific performance as for a court of law to award a judgment of damages for its breach.” Hutchins v. Honeycutt, 286 N.C. 314, 319, 210 S.E.2d 254, 257 (1974). Additionally, “[w]here land is the subject matter of the parties’ agreement, the vendor, like the purchaser, may seek specific performance without showing the inadequacy of a legal remedy.” Deans v. Layton, 89 N.C. App. 358, 371, 366 S.E.2d 560, 568 (1988); Burgin v. Owen, 181 N.C. App. 511, 515, 640 S.E.2d 427, 430 (2007).

3. The remedy of specific performance is a matter of the Court’s discretion.

4. The Purchase Agreement is a legally enforceable contract.

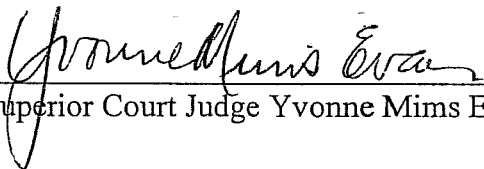
5. Plaintiff acted in a forthright manner and in good faith. Plaintiff should not be made to endure the hardship of Defendants’ breach, simply because Defendants do not want to perform. Absent an order requiring Defendants to specifically perform on the Purchase Agreement and purchase the property, Plaintiff will suffer an inequitable hardship.

6. The Court recognizes the hardship that an order of specific performance will work on the Defendants, but it is a hardship that they could have contemplated. Accordingly, there is no reason Defendants should not perform on their obligations.

Based on the foregoing Findings of Fact and Conclusions of Law, the Court in its discretion enters the following Order:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion for a Directed Verdict on its claim for Specific Performance will be GRANTED. The Court hereby ORDERS Defendants to fulfill their contractual obligations to the Plaintiff and purchase the Condominium, as described in the Purchase Agreement, within 60 days of this Order. Defendants' failure to do so shall be enforceable by the contempt powers of the Court.

This the 10<sup>th</sup> day of August, 2010.

  
\_\_\_\_\_  
Superior Court Judge Yvonne Mims Evans

**CERTIFICATE OF SERVICE**

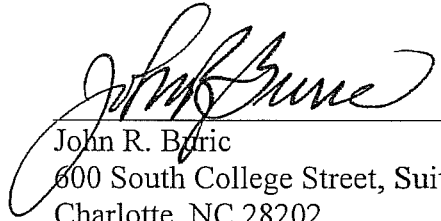
I hereby certify that the foregoing **ORDER** has this date been served upon the Defendants by facsimile and depositing a copy of same in the United States Mail, sufficient postage prepaid, addressed to Defendants' attorney of record as follows:

*FACSIMILE: (704) 602-8075*

Mel Garofalo  
Hedrick, Gardner, Kincheloe & Garofalo, LLP  
P.O. Box 30397  
Charlotte, NC 28230

This the 12<sup>th</sup> day of August, 2010.

**JAMES, McELROY & DIEHL, P.A.**



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John R. Bovic  
600 South College Street, Suite 3000  
Charlotte, NC 28202  
Telephone: (704) 372-9870  
Facsimile: (704) 333-5508  
*Attorneys for Plaintiff*



**JAMES  
McELROY  
& DIEHL, P.A.**  
ATTORNEYS AT LAW

600 South College Street  
Charlotte, North Carolina 28202  
704 372-9870 | 800 247-9870  
Fax 704 333-5508  
www.jmdlaw.com

J. Mitchell Aberman\*  
John S. Arrowood  
Catherine A. Barnes  
John W. Beddow  
Justin D. Bice  
Sarah M. Brady  
John R. Buric  
Jon P. Carroll  
Matthew T. Covington  
J.P. Davis  
William K. Diehl, Jr.  
Jonathan D. Feit

Richard B. Fennell\*  
Kristen E. Finlon  
Jared E. Gardner  
Gary S. Hemric  
J. Alexander Heroy  
Edward T. Hinson, Jr.  
Katherine S. Holliday  
Beth Tate Hondros  
David M. Kern  
Irene P. King  
G. Russell Komegay, III  
Harrison A. Lord

Pender R. McElroy  
Fred B. Monroe  
Preston O. Odom, III  
Fred P. Parker, IV  
Adam L. Ross  
Claire J. Samuels  
Amy E. Simpson  
Bruce M. Simpson  
John Paul Tsahakis  
Charles M. Viser  
  
\*Also admitted in S.C.

**Of Counsel**  
Henry James, Jr.  
Robert H. Sheppard  
Mary Kay Baynard  
B. Frederic Williams

August 12, 2010

VIA FACSIMILE: (704) 602-8075  
AND U.S. FIRST CLASS MAIL

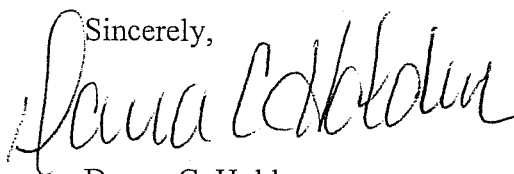
Mel J. Garofalo  
Hedrick Gardner Kincheloe & Garofalo LLP  
P.O. Box 30397  
Charlotte, North Carolina 28230

**RE: *Origin Development, LLC v. Mike Day and Betsy Day***  
**Mecklenburg County Superior Court No. 09-CVS-7887**

Dear Mr. Garofalo:

You are hereby served with an executed copy of the Order entered by Judge Evans and filed with the Court in connection with the above-entitled action.

Should you have any questions, please don't hesitate to call.

Sincerely,  


Donna C. Holdren  
Assistant to John R. Buric

dch  
cc: Jim Hock